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SECRETARY, BOARD OF  
OIL, GAS & MINING

BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH

IN THE MATTER OF THE REQUEST  
FOR AGENCY ACTION OF AVIARA  
ENERGY CORPORATION TO FLARE  
OR VENT ASSOCIATED GAS  
PRODUCED FROM THE KANE  
SPRINGS FEDERAL #27-1, #19-1A,  
#10-1 AND #34-1 OIL WELLS  
LOCATED IN TOWNSHIPS 25 AND  
26 SOUTH, RANGES 18, 19 AND 20  
EAST, S.L.M., GRAND COUNTY,  
UTAH.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

Docket No. 98-005  
Cause No. 196-36

This cause came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday, April 22, 1998, at the hour of 10:00 a.m. The following Board members were present and participated at the hearing: Thomas B. Faddies, Acting Chairman, Stephanie Cartwright, Raymond Murray, Elise L. Erler, and Wayne Allan Mashburn. Board members Dave D. Lauriski and Jay L. Christensen were unable to attend. Attending on behalf of the Division of Oil, Gas and Mining (the "Division") was John Baza, Associate Director - Oil & Gas. The Board and the Division were represented by their counsel, Daniel G. Moquin, Esq. and Patrick J. O'Hara, Esq., Assistant Attorneys General, respectively.

The U. S. Bureau of Land Management ("BLM") was represented by Robert A. Hendricks, Chief, Branch of Fluid Minerals, Utah State Office.

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Testifying on behalf of Petitioner Aviara Energy Corporation ("Aviara") was Donny W. Worthington, Manager, Environmental, Safety and Regulatory Affairs for Aviara. Michael S. Johnson, Esq., Pruitt, Gushee & Bachtell, appeared as attorney for Aviara.

No statements were made in opposition to the Request for Agency Action and no other parties appeared or participated at the hearing.

The Board, having considered the testimony presented and the exhibits received at the hearing, being fully advised, and for good cause appearing, hereby makes the following findings of fact, conclusions of law, and order.

#### **FINDINGS OF FACT**

1. Aviara is the operator of the Kane Springs Federal #27-1, #19-1A, #10-1 and #34-1 wells, which are located in Townships 25 and 26 South, Ranges 18, 19 and 20 East, SLM, Grand County, Utah.

2. The Board at various dates prior to 1997 has authorized flaring or venting of associated gas from each of the above listed oil wells at a rate of production and on a time frame consistent with NTL-4A Authorizations granted by the Bureau of Land Management ("BLM").

3. All of these NTL-4A Authorizations, and the Board's authorizations under Rule R.649-3-20.5, expired simultaneously on October 11, 1996.

4. A BLM imposed 10-well limitation for the Grand Resource Area, within which the Kane Springs Federal Unit is included, dictates that no new oil and gas wells can

be drilled on federal lands until a new Environmental Impact Statement ("EIS") is completed for the Grand Resource Area. Oil and gas industry participants have withdrawn their participation in the study and the Bureau of Land Management has not proceeded with the EIS. The circumstances surrounding the prospects of drilling new wells and the economics of constructing a gas pipeline to service these wells have not changed significantly since Petitioner's presentation before the Board on September 27, 1995.

5. Associated gas produced from the #27-1, #19-1A, #10-1 and #34-1 oil wells has declined substantially over time.

6. The estimated oil reserves associated with these wells are approximately 225 thousand barrels, while the estimated gas reserves are 258 million cubic feet. At prevailing market prices, even if all remaining reserves of both oil and gas were produced and sold, the revenue realized would cover only approximately one-half of the estimated cost of \$5,000,000.00 or more for construction of a pipeline to market associated gas. The construction of a pipeline to market the associated gas production from these wells is therefore uneconomical at this time.

7. At the hearing on this matter, the BLM, through Robert Hendricks, indicated that Aviara's NTL-4A authorizations were in the process of being granted for an indefinite term until such time as the construction of a pipeline became economical.

8. The Division recommended to the Board that the flaring authorizations sought by Aviara be granted by the Board for an indefinite term. The Division recommended this grant be conditioned upon the Division having the power to revisit the issue periodically

to determine if circumstances have changed enough to warrant another hearing on the matter.

9. Pursuant to the requirements of statute and regulation, Aviara mailed a copy of the Request for Agency Action to the last known addresses of all surface, mineral, royalty and working interest owners in the subject wells and associated leases.

10. Notice was duly published as required by Utah Admin. Code Rule R641-106-100.

11. A motion was made, seconded, and adopted that flaring of associated gas from the four (4) wells be granted for an indefinite term. This authorization to be provided upon the condition that the Division has the power to periodically review the circumstances surrounding these wells to determine if conditions have changed and a new hearing is necessary to determine if the associated gas should be disposed of by some other means.

#### **CONCLUSIONS OF LAW**

1. Due and regular notice of the time, place, and purpose of the hearing was properly given to all interested parties in the form and manner required by law and the rules and regulations of the Board and Division.

2. The Board has jurisdiction over all matters covered by the Request for Agency Action pursuant to the Utah Code Ann. § 40-6-5 and Utah Code Admin. Code Rule R649-3-20.5 and 6.

## **ORDER**

NOW, therefore, the Board enters the following Order:

1. Petitioner is authorized by the Board pursuant to Utah Admin. R. 649-3-20.5 to flare or vent associated gas from the Kane Springs Federal #27-1, #19-1A, #10-1 and #34-1 wells for an indefinite period.

2. This authorization is made upon the condition that the Board, on its own motion or on the motion of the Division, may review and modify this Order upon a showing that a change of conditions has occurred which justifies another hearing on this matter to determine if the associated gas should be disposed of by some other means.

3. This Order is based exclusively on evidence of record in the adjudicative proceeding or on facts officially noted, and constitutes the signed written order stating the Board's decision and the reasons for the decision, all as required by the Administrative Procedures Act, Utah Code Ann. § 63-46b-10 and Utah Administrative Code R641-109.

4. Notice re Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration: As required by Utah Code Ann. § 63-46b-10(e) to -10(g) (1953, as amended), the Board hereby notifies all parties in interest that they have the right to seek judicial review of this final Board Order in this formal adjudication by filing a timely appeal with the Utah Supreme Court within 30 days after the date that this Order is issued. Utah Code Ann. § 63-46b-14(3)(a) and -16 (1953, as amended). As an alternative to seeking immediate judicial review, and not as a prerequisite to seeking judicial review, the Board also hereby notifies parties that they may elect to request that

the Board reconsider this Order, which constitutes a final agency action of the Board.

Utah Code Ann. § 63-46b-13, entitled, "Agency review - Reconsideration," states:

"(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3) (a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied."

Id. The Board also hereby notifies the parties that Utah Administrative Code R641-110-100, which is part of a group of Board rules entitled, "Rehearing and Modification of Existing Orders," states:

"Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of that month."

Id. See Utah Administrative Code R641-110-200 for the required contents of a Petition for Rehearing. If there is any conflict between the deadline in Utah Code Ann. § 63-46b-13 (1953, as amended) and the deadline in Utah Administrative Code R641-110-100 for moving to rehear this matter, the Board hereby rules that the later of the two deadlines

shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the party may still seek judicial review of the Order by perfecting a timely appeal with the Utah Supreme Court within 30 days thereafter.

5. The Board retains continuing jurisdiction over all the parties and over the subject matter of this Cause, except to the extent said jurisdiction may be divested by the filing of a timely appeal to seek judicial review of this Order by the Utah Supreme Court.

6. A signed, faxed copy of this Order shall be deemed equivalent to an original for all purposes.

ISSUED this 14 day of May, 1998.

STATE OF UTAH  
BOARD OF OIL, GAS AND MINING



Thomas B. Faddies, Acting Chairman